

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**DENNIS A. LADWIG REVOCABLE  
TRUST**

AFO #56511  
Spring Township, Cherokee County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 20 16 -AFO- 29

TO: Dennis A. Ladwig Revocable Trust  
Dennis Ladwig  
311 14<sup>th</sup> Avenue West  
Spencer, Iowa 51301

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the Dennis A. Ladwig Revocable Trust (Ladwig Trust) for the purpose of resolving National Pollutant Discharge Elimination System (NPDES) Permit reporting violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Don Cunningham, Field Office 3  
Iowa Department of Natural Resources  
Gateway North Mall-1900 North Grand  
Spencer, Iowa 53101  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issued

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pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Ladwig Trust owns and operates a cattle open feedlot located at 5125 Vine Avenue, Sutherland, Iowa (Section 6, Spring Township, Cherokee County, Iowa). The feedlot operates under the name of Deer Run Ranch. The feedlot has a capacity of 2,450 head of cattle. On November 20, 2011, the feedlot was issued NPDES Permit #1856511. Section VI of the permit requires the facility to submit quarterly reports due January 10, April 10, July 10, and October 10 of each year to the DNR. Section VI of the permit also requires the facility to submit an annual report due January 10 each year to the DNR. The permit expired on November 29, 2016; however the facility submitted the renewal application on November 14, 2016. Therefore, the facility continues to operate under the permit.

2. On April 20, 2012, DNR Field Office 3 sent a letter to facility reminding it of the quarterly reporting requirements in its NPDES permit.

3. On October 10, 2014, the quarterly report for the facility was due. The facility failed to submit the quarterly report by October 10, 2014. On October 20, 2014, DNR issued the facility a Notice of Violation letter for the failure to timely submit the quarterly report. The quarterly report was never submitted.

4. On January 10, 2015, the annual and quarterly reports for the facility were due. The facility failed to submit the annual and quarterly reports by January 10, 2015. On January 20, 2015, DNR issued the facility a Notice of Violation letter the failure to timely submit the quarterly and annual reports. The reports were received on January 30, 2015.

5. On April 10, 2016, the annual quarterly report for the facility was due. The facility failed to submit the quarterly report by April 10, 2016. On April 20, 2016, DNR issued the facility a Notice of Violation letter for failure to timely submit the quarterly report. The quarterly report was never submitted.

6. On October 10, 2016, the annual quarterly report for the facility was due. The facility failed to submit the quarterly report by October 10, 2016. On October 20, 2016, DNR issued the facility a Notice of Violation letter for failure to timely submit the quarterly report. The quarterly report was never submitted. The letter informed the facility the matter was being referred for further enforcement.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.104(9)"e" requires a NPDES permittee to submit quarterly reports by January 10, April 10, July 10 and October 10 of each year. The Ladwig Trust facility failed on four occasions to timely submit the quarterly reports for the facility. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.104(9)"f" requires a NPDES permittee to submit an annual report by January 10 of each year. The Ladwig Trust facility failed to timely submit the annual report by January 10, 2015 for the facility. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and the Ladwig Trust agrees to do the following:

1. The Ladwig Trust shall submit the quarterly report that was due October 10, 2016 to DNR Field Office 3 within 30 days of the date the Director signs this administrative consent order;
2. The Ladwig Trust shall submit timely quarterly and annual reports in the future; and
3. The Ladwig Trust shall pay an administrative penalty in the amount of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing

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the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” The Ladwig Trust has gained an economic benefit from the delayed submittal of the required reports. The Ladwig Trust delayed the costs associated with the recordkeeping and reporting. Based on the above facts, the economic benefit the Ladwig Trust received was at least \$200.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$1,300.00 is assessed for this factor.

Culpability – The Ladwig Trust has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. The Ladwig Trust has repeatedly failed to timely submit the required reports. Therefore, \$1,500.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of the Ladwig Trust. For that reason the Ladwig Trust waives the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resource

Dated this 28<sup>th</sup> day of  
December, 2016.

  
DENNIS A. LADWIG REVOCABLE TRUST

Dated this 16 day of  
Dec., 2016.

AFO #56511; Kelli Book, DNR Field Office 3, EPA, I.B.2.a